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SUPREME COURT OF THE UNITED STATES.

No. ~~122~~ 32.

AMOS BINNEY, APPELLANT,

VERSUS

CHESAPEAKE AND OHIO CANAL COMPANY.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, D. C.

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Style of court.

DISTRICT OF COLUMBIA, sct.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of December, being the fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the 56th: were present:

The Hon. WILLIAM CRANCH, Chief Judge, BUCKNER THRUSTON and JAMES S. MORSELL, Assistant Judges. HENRY ASHTON, Esq., Marshal. WILLIAM BRENT, Clerk.

In the record of proceedings of the same court, among others, are the following, to wit.

Parties.

AMOS BINNEY AGAINST THE CHESAPEAKE AND OHIO CANAL COMPANY.

Be it remembered, that, on the fourteenth day of January, in the year of our Lord eighteen hundred and thirty-two, the said Amos Binney, by Francis S. Key and Walter Jones, Es-

quire, his solicitors, filed in court here the following bill of complaint, to wit.

Bill of complaint.

"*To the honorable the circuit court of the District of Columbia for the county of Washington, as a court of equity now sitting.*

"The bill of complaint of Amos Binney, humbly sheweth:

"That in the year 1784 a charter was granted by the States of Maryland and Virginia to the Potomac Company, to which he begs leave to refer as a part of this bill. (Exh't A.)

"Your orator charges, that, prior to the grant of said charter, a certain Way, Paxon, and Cloud had purchased the title to three adjacent tracts of land called "Amsterdam," "Arrell's Folly," and "Whitehaven," situate on the margin of the river Potomac, and on that part of the said river called the Little falls, all which part of said river your orator charges to be wholly unnavigable; that they held the said lands in their possession, with the interest, to apply the water of said river to manufacturing purposes, for which they were, from their situation, well adapted; that, in the year 1793, the said company, intending to make a canal around the said Little falls, for navigation, under their said charter, and through the said lands, proceeded to condemn the same; a copy of which said condemnation is herewith, as a part of this bill, exhibited. (Exh't B.) That, after said condemnation, the said company entered on the lands thus condemned, and executed the said work, placing a small dam, running some distance into the river, at the head of said falls, on the aforesaid lands, for the purpose of more readily turning the water of said river into their said canal, which they constructed so as to receive more water than was necessary for the navigation of said canal, and which surplus water was wasted on the aforesaid lands by four sluice gates and three waste dams, and continued so to be wasted, in considerable quantities, during the continuance of said company's works; that the said canal and dam, and other works, were so constructed, as easily to admit, and at very small expense, such an enlargement thereof, as would at any time have admitted a further quantity of water, and more than was necessary for the navigation of said canal.

"That the title and possession of the lands aforesaid passed subsequently, by various conveyances, to a certain John K. Smith, (under whom your orator now holds and possesses the same,) who entered into a correspondence and negotiation with the President and Directors of said company, which is herewith also, as a part of this bill, exhibited. (Exh't D.)

"Your orator further shows, that, in the year 1825, a charter was granted by the Congress of the U. S. and by the Legislatures of Maryland and Virginia, to the Chesapeake and Ohio Canal Company; to which he also refers as a part of this bill. (Exh't C.) And he charges, that, agreeably to the provisions of said charter, the said company hath assumed all the

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property, rights, privileges, and responsibilities of the said Potomac Company, and that the latter company hath surrendered and released to the said former company all their chartered rights, privileges, and property, in the manner required by the said charter of said C. & O. Canal Company.

"Your orator further charges, that the said Ches. and O. Can. Co'y have taken into possession, among other property acquired by the said Potomac Company, that portion of the lands aforesaid, contained within the condemnation aforesaid, and have also entered upon other portions of said lands adjacent thereto, and have constructed thereon a canal of enlarged dimensions, occupying the site of the said former canal, constructed by the said Potomac Company in part, and in part using the said former canal, much enlarged and deepened, as a feeder for their main canal, and have constructed at its mouth a permanent stone dam across the Potomac river, introducing therein a large quantity of water, for the purpose and effect of which your orator refers to the printed memorials, reports, and documents of the President and Directors of said company, which he prays may be also taken as a part of this bill. (Exh't E.) Which said canal, dam, and feeder, your orator avers, may be still further enlarged if necessary, so as to admit a still further supply of water, which might conveniently be applied to the purposes both of navigation and manufactures; and although your orator contends, that, without such enlargement, there is at present an abundant supply for both said purposes, yet he hath been always willing, and yet is, to pay a fair proportion of the expenses of making such enlargement, if the same should be adjudged to be necessary, and to make equitable agreements therefor.

"Your orator further charges, that, both by the works of the said Potomac Company, and of the Ches. and O. C. Co'y, it was and is made, if not impracticable, yet very expensive and difficult for him to apply the water of the said river to works on his said lands, without taking the same out of the said canal or feeder.

"Your orator charges, that he hath been well advised, that, under the provisions of the said Potomac Company's charter, the proprietors of the said lands were entitled to use the surplus water of the said canal, so constructed by that company, on their said lands; and to require (if necessary) the enlargement of the works as provided for in the said charter on the terms therein prescribed, so as to admit larger supplies of water for navigation and manufactures on their said land; and the said proprietors were willing, in case the same had been necessary, to comply with such terms. And your orator charges, that he, as the present proprietor of said lands, hath similar rights by virtue of the provisions of the said charters, and that he made known his claim to said rights, to the President and Directors of said Ches. and Oh. Can. Co'y, both before and since the construction of their said works through the said lands, and

the opinions of the counsel who had advised him thereon, and required of them to be admitted into the enjoyment thereof, as appears by the paper herewith exhibited, marked (exh't F,) which he also prays may be considered as a part of this bill.

"Yet the said President and Directors have wholly refused to admit him the use of water from their said canal or feeder, or any of the said rights thus secured to the proprietors of said lands, upon any terms whatever, or to make with him any equitable agreements for his enjoyment of the same, but wholly deny that he hath any such rights, and avow their determination to take the water through his said lands without his being allowed to have in any manner, or upon any terms, any use of the same from their said canal or feeder, and to dispose of the same after passing through his said lands, at places where it may be essential to waste the surplus water, according to the provisions of their present charter, and also, wheresoever they may find it advantageous to do so, (without injury to the navigation,) in case they can obtain such enlargement of their charters, for which they are now making application. All which is contrary to equity and the aforesaid provisions of said charters.

"For as much, therefore, as your orator is remediless in the premises, without the aid of this honorable court, and to the intent that the said Chesapeake and Ohio Canal Company may be compelled to do justice to your orator, or allow him the use of the said surplus water, from the said canal and feeder, on his said lands, and in case the waters therein should be insufficient both for the purposes of navigation and manufactures, then to make with your orator such equitable agreements for the enlargement thereof, as to admit a sufficiency for both of said purposes, he paying and contributing, in such case, a fair and just proportion of the expenses thereof, as he is willing, in such case, to do, and to admit your orator into the full enjoyment of all the rights and privileges secured to him by the said charters, and that such other and further relief in the premises, as to your honors may seem right, may be decreed by your honors, may it please you to grant him the U. S. writ of subpœna, to the Chesapeake and Ohio Canal Company directed, commanding them to be and appear before your honors, to answer hereto, and to abide by such order and decree as to your honors may seem right, &c."

W. JONES, &
F. S. KEY, *for comp't.*

(See agreement, copied in page 23.)

Appearance of defendants.

And thereupon the said Chesapeake and Ohio Canal Company appear in court here, by Richard S. Coxe and Thomas Swann, Esquires, their solicitors, and file here in court the following answer, to wit.

Answer.

"The answer of the Chesapeake and Ohio Canal Company to the bill of complaint of Amos Binney, complainant.

"These defendants, saving and reserving to themselves all and all manner of advantage and benefit of exception that may

be had or taken to the manifold uncertainties, imperfections, and errors, in the said bill of complaint contained, nevertheless, for answer thereunto, or unto so much thereof as they are advised and believe that it is necessary for them to make answer unto, they answer and say—

"That they admit it to be true, as is set forth in the said bill of complaint, that a charter was granted in the year 1784 by the States of Maryland and Virginia, incorporating the Potomac Company, and they refer to the said acts of incorporation for the powers, duties, and responsibilities created and vested in and imposed upon said company to the said acts of incorporation, as the same are contained in the said charter, and exhibited by said complainant as part of his bill. And these defendants further admit that the said Potomac Company, claiming and exercising corporate powers under and by virtue of said charter of incorporation, procured in due form of law, and in conformity with the provisions of said acts of incorporation, a condemnation of the land mentioned and described in the said inquisition exhibited by said complainants to and for the use of said canal.

"And these defendants refer to said proceedings of condemnation, and to the documents and plats thereunto annexed, or to copies thereof, when the same shall be produced for greater certainty, both as regards the location and description of said lands, and the proceedings which have been had as aforesaid in reference to the same.

"And these defendants, further answering, say, that they have no knowledge, and therefore can neither admit nor deny, but leave the said complainant, so far as it may seem beneficial or useful to him, to make out, by proof and competent testimony, either his title as alleged in said bill of complaint to the said tracts of land set forth and mentioned in said bill, or the extent of said tracts, or how far the same may cover or include the land mentioned and described in said proceedings of condemnation. And they require that said complainant shall establish, by competent and legal evidence, that he, or those under whom he claims, have and had said title, as is pretended, to said tracts of land; when, and how the same is derived; and how far the lines of the tracts so claimed by him coincide with, cover, or include the lands included within the said condemnation as aforesaid, to and for the uses and purposes of the said Potomac Company.

"And these defendants, further answering, say, that they do not admit, and call upon said complainant for full proof, that, in connexion with said tracts of land, or in any other way, those under whom he claims, or he himself, ever had, or now has, any right to the water of the river Potomac, with which either the said Potomac Company or these defendants have, in any shape or manner, interfered, or which they have violated or infringed; and they require that said complainant shall make out his proof of title thereto, by full and substantial proof.

"And further answering, these defendants, not knowing, can-

not admit, and require full proof of the same from said complainant, that either he, or those from whom he claims title, whatever title may be made out by him to the lands aforesaid, ever had, held, or enjoyed any water fall, or water right, or power, or privilege, of using or employing the waters of the Potomac river, in any form or manner, to manufacturing or other purposes, or if they or he ever did enjoy or possess such, that any of the acts, doings, or proceedings, dams, buildings, erections, or works, either of the said Potomac Company, or of these defendants, have interfered with, diminished, injured, or impaired the same, in any manner, measure, or degree.

"And these defendants, further answering, admit and say, that various pretensions and claims of right have heretofore been set up by John K. Smith, mentioned in said bill of complaint, to certain privileges for the use of water from the works of said Potomac Company, and that the correspondence which has been annexed to said bill of complaint passed between said parties. But these defendants deny that said correspondence contains any compact or agreement obligatory or binding upon them, or that they acquired the rights of the Potomac Company subject to any claims or admissions contained in said correspondence; but they insist and submit that the same never assumed such a shape and form, as to confer or restrict the legal rights of the parties, still less to be obligatory either upon complainant or defendant. And these defendants submit the same to the consideration of your honors, as propositions and offers of compromise and arrangement, without conceding that they can be regarded as any evidence of right or title in either of the parties to this suit.

"And further answering, these defendants admit that various acts were passed by the Legislatures of Maryland and Virginia, and by the Congress of the United States, in confirmation of the same, constituting the charter of the Chesapeake and Ohio Canal Company, as set forth in complainant's bill of complaint. And they admit that the said Potomac Company hath surrendered all its rights, powers, and capacities, under its charter, to these defendants, in conformity with the provisions of said charter.

"And that these defendants, so far as the provisions of said charter extend, and as the said surrender and assignment operate, but no farther, have assumed the obligations and responsibilities of said Potomac Company; but they claim an exemption from all such duties, obligations, and responsibilities, not enumerated or contained in said charter or surrender, or other public and notorious acts as purchasers, without notice of any secret agreement, of which they were ignorant when they accepted said surrender, and paid, or bound themselves to pay, the equivalent and consideration of the same. And they submit to your honors, that the extent of said liabilities and responsibilities cannot, in equity, be carried beyond said public acts and proceedings.

"And further answering, these defendants admit, that, by virtue of the assignment, transfer, and surrender of the said Potomac Company, they have entered upon, possessed, and occupied, and still possess and occupy, the lands and premises included within the said condemnation and inquisition as aforesaid, and that they claim full power, right, and title, in and over the same. And that they have enlarged the dimensions of the canal which they have constructed in and through the said lands, so as aforesaid described, under and by virtue of a condemnation or condemnations under the authority of the charter granted as aforesaid to these defendants; and that the extent of such condemnations and enlargement of said canal will more particularly and distinctly appear by the inquisition and condemnation, a copy of which is hereunto annexed; and these defendants pray that the same may be taken as part of this their answer.

"And further answering, these defendants admit that the said Potomac Company did, for the purpose of diverting a portion of the waters of the Potomac river into their said canal, erect and construct a dam leading from the Maryland to the Virginia shore; and that these defendants, since the surrender and assignment to them as aforesaid of the estate, rights, and privileges of the said Potomac Company, have caused to be constructed a dam of more permanent character and more durable materials, partly on the site of the said first mentioned dam, and partly on other ground, at or near the mouth of the old Potomac Company canal, near the Little falls, and at or near that portion thereof now used as a feeder to the canal of these defendants. And they admit that the dam which they have thus caused to be constructed, is of a greater height than that which was erected by the Potomac Company. And they admit, that, by means of said dam, more water is thrown from said river into their canal, than was diverted into the Potomac Company canal; but they insist that such alteration in said dam was made for the purpose of giving to the present canal, in its enlarged dimensions, the required depth of six feet. And they further admit, that, by means of said dam and works, they may and do pass into the present canal a greater quantity of water than may be essentially necessary for the purposes of navigation; but they do not admit, but, on the contrary, distinctly deny, that said dam and works are so constructed as to admit, at an inconsiderable expense, of such an enlargement as would materially increase the volume of water, which, by means thereof, is diverted into the canal as it now exists. But they insist that the said dam, being a stone arch extending from the Maryland to the Virginia shore, cannot receive an additional elevation, the only enlargement which would conduce to the proposed end, without a very great increase of expense, and without subjecting the said work to a great additional peril.

"And these defendants, further answering, say, that the said dam, so constructed by them, does not in any part of it abut,

rest, or lie upon the ground to which complainant claims title, but that, on the Maryland shore, where the said lands lie, said dam is higher up the river than his highest line; that the present feeder, by means whereof said water is carried into the main canal, is, throughout its whole extent, carried through land to which complainant has no pretence of title, the said dam and feeder being built and constructed on ground heretofore condemned for and on behalf of said Potomac Company: and they are advised, and insist, that said complainant, and those under whom he claims, have not now, nor have they ever had, more particularly since the date of the charter of the Potomac Company, any legal right, by virtue of their estate as *riparian* proprietor, to erect or construct any dam from the bank of the river into or across the stream, but that, had the same been erected or constructed, it would have been liable by law to be proceeded against, and abated as an illegal nuisance; wherefore, these defendants are advised, and do maintain and insist before your honors, that said complainant never had any right or title to any portion of the water diverted as aforesaid from the river to said canal, by means of said dam and feeder as aforesaid.

"And further answering, they say, that if any such right as is pretended ever existed in said complainant, or those under whom he claims title to erect and construct a dam into or across the said river, from the shore to which they claim to have a proprietary right, and to divert said water by means thereof, and through feeders, canals, or races, so as to apply the same to manufacturing or other purposes, these defendants insist, aver, and maintain, that the said rights and powers are in degree impaired or diminished, or in any manner affected by the said works of the said Potomac Company, or of these defendants, but continue as complete and practicable as they have ever done.

"And further answering, they say, that there is no such right in said complainant, as he appears to claim, and set up, to have any of the works of these defendants enlarged or altered, so as to pass a greater volume of water than is now admitted into said canal, and to participate in the advantages and use of such additional water, upon contributing to the expense of such additional works or alterations; but they are advised, that, if any such right did ever exist, which they by no means admit, the period for enforcing the same has long since expired, and is now extinct. The complainant, under the supposition that such right exists in him, has in said bill expressed a willingness to bear a fair portion of the expense attending the proposed enlargement of the works constructed by these defendants, but he does not state the terms upon which he would make such contribution; and, until these terms are distinctly specified, these defendants cannot accede to a proposition of so vague and undefined a character.

"And further answering, these defendants say, that they cannot admit, but on the contrary deny, that any of the proprie-

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tors of lands binding upon said Potomac river, were entitled as such proprietors, under the charter of the said Potomac Company, to the surplus water in a canal constructed by said company. They are informed, and believe, that, at and previous to the construction of said canal, no proprietor of land thus situated, proposed or offered to contribute any portion of the expense of constructing said canal, or the other necessary works connected with the same, for the purpose of securing to themselves the benefit and enjoyment of any portion of said water, or of any water privileges, or ever requested that said canal or works should be constructed with any such view. And these defendants deny, that the said proprietors, or any of them, after said canal was so constructed without their aid, but at the exclusive cost of the Potomac Company, had any legal or equitable right upon any terms to *to* ask for or require an enlargement of the said canal, or of any of the works thereof, as provided for in their charter, for the purpose of affording to them any such advantages, or any participation in the use of said water.

"These defendants, further answering, say, that they admit that said complainants, or others under whom he professes to derive title, have claimed such privileges and rights, as appears by the exhibit annexed to said bill of complaint; and they admit that the presentation of said claims has led to much discussion between said claimants and said Potomac Company and these defendants in reference to the same, but they deny that any rights are thereby given, created, or recognised, other than such as are founded in the general law of the land, or in the charters so as aforesaid granted to the said Potomac Company and to these defendants.

"And further answering, these defendants say, that they have made their said canal at a very great expense, without any aid or assistance from said complainant, or from those under whom he professes to derive title, and without any offer on their part, or on his, to bear any portion of said expense. In the performance of the trusts reposed in them, they have cautiously abstained to appropriate no lands claimed by complainant for the use of the canal, but such as were condemned under their charter of incorporation. They admit that said canal is constructed upon an enlarged plan, as to its dimensions; and they hope and believe, that, in particular situations, and under particular circumstances, they will have more water than is indispensably necessary for the purposes of navigation; and they hope and believe that they will have surplus water, which may be safely and beneficially applied to other objects, without injuriously affecting the paramount design of said canal, to wit, its navigation; and they admit that a considerable quantity of surplus water might be used and expended on that part of the canal adjacent to the lands claimed by complainant, and through said lands, without injury to the navigation of said canal. But they claim, as of undoubted right, and of vital importance to this great public interest, that no other party shall under any

circumstances control or interfere with them in the disposition or management of such surplus water, or in selecting the places where it shall be vented and employed. Whether they possess the right, and how far, to dispose of the same, even with the assent of the proprietors of the adjacent land, they submit to the judgment of your honors, and they would earnestly solicit that the existence and extent of this right should be judicially ascertained.

"And further answering, these defendants say, that if complainant, or those under whom he claims, ever held or possessed any such estate adjacent to said river, as would give to them any fall of water or water privilege sufficient for the use of a mill or other manufacturing establishment, no such right has been in any manner impaired or diminished by said Potomac Company or these defendants; or, if it has been so impaired and diminished, the same was a proper subject for consideration and compensation, when the lands so used by them were condemned for the purposes of the said parties, and must be held and esteemed to have entered into the estimate of damages assessed to the said proprietors. But they insist that a sufficient supply of water for any or every practicable purpose for which it could be employed, is left in the river, which said complainant is not restrained by these defendants from using or employing for any such objects, and that his right to make and his power to make and construct the necessary dams and canals, remain unaffected by the acts and doings of said Potomac Company or of these defendants.

"And further answering, these defendants say, that they have ever been willing and desirous of selling and disposing of their surplus water, if they have any legal authority so to do; but they claim the said water as their sole and exclusive property; and they further claim and insist that they possess the same right in disposing of the same, to determine where it shall be vented from the canal, and in what quantities, and upon what terms it shall be enjoyed by others, as they have in exercising similar acts of ownership over any other description of property to which their title is absolute and unconditional.

"And these defendants respectfully submit to your honors the decision of the aforesaid points of controversy, and they humbly ask to be hence dismissed with their reasonable costs in this behalf most injuriously sustained."

And thereupon the complainant, by his solicitors aforesaid, filed in court here the following replication, to wit.

Replication.

"This complainant, saving and reserving to himself all and all manner of exceptions, &c. for replication to the answer of said defendants, saith, that he doth and will aver, maintain, and prove his said bill to be true and sufficient in the law to be answered unto by said defendants, and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by the repliant, without that that, &c."

And thereupon the complainant, by his solicitor, filed in court here the following affidavit, to wit.

GEORGETOWN, *Janary* 15, 1829. Affidavit of John Threlkeld

I do hereby certify that I was well acquainted with a certain John Ballendine, from about the year 1772 to about the year 1781; and that within that period he was occupied in cutting or making a canal or cut, to convey the water from round the Little falls of the river Potomac, for the purpose of erecting extensive waterworks thereon; that he went over to England for the express purpose, and brought with him to this country a number of workmen from the Duke of Bridgewater's works, as they all stated, among whom I well remember Robert Sutton and John Sutton; and that they were employed a considerable time on the canal or cut, upon which he, the said Ballendine, expended considerable sums, having, among other expenditures, built a stone house for the accommodation of his aforesaid workmen, which was thrown down by the great ice freshet about the year 1784; and the principal cause of his abandoning his said operations was pecuniary embarrassments with certain persons in Virginia: that his right in carrying on the aforesaid works was never questioned, as to the land or water privileges; and that soon after his operations ceased, certain persons, Way, Paxon, and Cloud purchased the aforesaid property of the said Ballendine, for the purposes and views of establishing waterworks: that, when the said Way, Paxon, and Cloud became the proprietors, a number of persons were actively engaged in arrangements for the improvement of the navigation of the river Potomac, among whom, Thomas Johnson, formerly Governor of Maryland, and the late William Deakins, were the most active and influential in procuring the charter of the Potomac Company. I was at the place where the locks now are, when Cloud was arranging with Thomas Johnson and William Deakins aforesaid, about a jury to value the land through which the Potomac Company's canal might pass. I observed to Mr. Cloud, "give them the land for the use of the water." Mr. Johnson and Mr. Deakins thereupon observed, "the water was his, and they could not prevent him from it, on condition that he was not to use it so as to obstruct the navigation."

In testimony whereof, I have hereunto set my hand and seal, the date above mentioned.

JOHN THRELKELD, [L. S.]

Witness, JOHN COX.

Personally appeared, this twenty-first day of January, 1829, the above named John Threlkeld, of the county of Washington, in the District of Columbia, before me, a justice of the peace, for the county aforesaid, and being duly sworn according to law, made oath that the facts and things stated in the above certificate, and signed by him, are strictly true, to the best of his knowledge and belief.

Sworn to, before

JOHN COX, *J. P.*

Thereupon, the parties aforesaid, by their solicitors aforesaid, filed in court here the following agreement, to wit.

Agreement of parties. It is agreed in this case to supersede the necessity of swelling the record by the introduction of the title papers and other testimony that the complainant has proved his title to the lands claimed by him, and that fact is therefore admitted.

It is also admitted that the location of the said lands, and their susceptibility of improvement for manufacturing purposes, are as set forth in the said bill.

Cause set for hearing. And thereupon, by consent of the said parties, by their solicitors aforesaid, the said cause was set for hearing on the bill, exhibits, and proofs depositions, replication. And thereupon the court made the following decree, to wit.

Decree dismissing bill. This cause having been set for hearing by consent of parties on the bill, answer, exhibits, replication, proofs, and depositions, and the same having been by the court read, heard, and fully understood, and mature deliberation being thereupon had, it is, this 14th day of January, 1832, ordered and decreed that the said bill be dismissed with costs.

Appeal prayed. And thereupon the said A. Binney, by his solicitors aforesaid, prays an appeal from judgment aforesaid, so as aforesaid rendered to the Supreme Court of the United States, and it is granted him. And the said Amos Binney, by his solicitors aforesaid, at the same time produced and filed in court here the United States' writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, (the defendants having dispensed with an appeal bond,) and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

Clerk's certificate. In testimony whereof, I hereto subscribe my name, and affix the seal of said circuit court, at the city of Washington, this 24 day of January, 1822.

WM. BRENT, [L. S.]
Clk. C. C. D. C. for Wash'n county.

Writ of error. UNITED STATES OF AMERICA, SS.—*The President of the United States, to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting.*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Amos Binney, complainant, against the Chesapeake and Ohio Canal Company, a manifest error hath happened, to the great damage of the said Amos Binney, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and

full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the
next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness, the honorable John Marshall, chief justice of the said Supreme Court.

Issued this 14th day of January, 1832.

WM. BRENT, *Clerk.* [L. S.]

Citation.

UNITED STATES OF AMERICA, *District of Columbia, Washington county, ss.—To the Chesapeake and Ohio Canal Company.*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the Monday of next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Amos Binney plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said Amos Binney, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Cranch, chief judge of the circuit court for the District of Columbia, this 14th day of January, A. D. 1832.

Service acknowledged by Mr. Swann, the attorney for the defendant.